

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 17-16858

Docketed: 09/14/2017
Termed: 08/29/2019

Nature of Suit: 2895 Freedom of Information Act of 1974

ALDF, et al v. USDA, et al

Appeal From: U.S. District Court for Northern California, San Francisco

Fee Status: Paid

Case Type Information:

- 1) civil
- 2) united states
- 3) null

Originating Court Information:

District: 0971-3 : [3:17-cv-00949-WHO](#)

Trial Judge: William Horsley Orrick, District Judge

Date Filed: 02/23/2017

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
08/14/2017	08/14/2017	09/13/2017	09/13/2017

Prior Cases:

None

Current Cases:

None

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Plaintiff - Appellant,

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v.

UNITED STATES DEPARTMENT OF AGRICULTURE
Defendant - Appellee,

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ANIMAL AND PLANT HEALTH INSPECTION SERVICE
Defendant - Appellee,

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PUBLIC CITIZEN, INC.
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ANIMAL LEGAL DEFENSE FUND; STOP ANIMAL EXPLOITATION NOW; COMPANION ANIMAL PROTECTION SOCIETY; ANIMAL FOLKS,

Plaintiffs - Appellants,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; ANIMAL AND PLANT HEALTH INSPECTION SERVICE,

Defendants - Appellees.

09/14/2017	1 17 pg, 1.29 MB	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 09/21/2017. Transcript ordered by 10/13/2017. Transcript due 11/13/2017. Appellants Animal Folks, Animal Legal Defense Fund, Companion Animal Protection Society and Stop Animal Exploitation Now opening brief due 12/22/2017. Appellees Animal and Plant Health Inspection Service and United States Department of Agriculture answering brief due 01/22/2018. Appellant's optional reply brief is due 21 days after service of the answering brief. [10580852] (JBS) [Entered: 09/14/2017 10:25 AM]
09/18/2017	2 2 pg, 79.61 KB	Filed (ECF) notice of appearance of Daniel Tenny for Appellees USDA and Animal and Plant Health Inspection Service. Date of service: 09/18/2017. [10583987] [17-16858] (Tenny, Daniel) [Entered: 09/18/2017 06:48 AM]
09/18/2017	3	Attorneys Peter Michael Bryce and Peter Michael Bryce in 17-16858 substituted by Attorneys Daniel Tenny and Daniel Tenny in 17-16858 [10584322] (JJF) [Entered: 09/18/2017 10:17 AM]
09/20/2017	4 2 pg, 266.87 KB	Filed clerk order (Deputy Clerk: LAB): A review of the record suggests that this court may lack jurisdiction over the appeal because the orders challenged in the appeal do not appear to be final or appealable. See WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (dismissal of complaint with leave to amend is not appealable); see also Fed. R. Civ. P. 54(b); Chacon v. Babcock, 640 F.2d 221, 222 (9th Cir. 1981) (order is not appealable unless it disposes of all claims as to all parties or judgment). Within 21 days after the date of this order, appellants shall move for voluntary dismissal of the appeal or show cause why it should not be dismissed for lack of jurisdiction. If appellants elect to show cause, a response may be filed within 10 days after service of the memorandum. If appellants do not comply with this order, the Clerk shall dismiss this appeal pursuant to Ninth Circuit Rule 42-1. Briefing is suspended pending further order of the court. [10587463] (OC) [Entered: 09/20/2017 11:00 AM]
09/21/2017	5 2 pg, 77.87 KB	Filed (ECF) notice of appearance of Lindsey E. Dunn for Appellant ALDF. Date of service: 09/21/2017. [10589557] [17-16858] (Dunn, Lindsey) [Entered: 09/21/2017 02:34 PM]
09/21/2017	6 6 pg, 32.55 KB	Filed (ECF) Appellant ALDF Mediation Questionnaire. Date of service: 09/21/2017. [10589597] [17-16858] (Dunn, Lindsey) [Entered: 09/21/2017 02:44 PM]
09/21/2017	7	Added attorney Lindsey Dunn for ALDF, in case 17-16858. [10589601] (JFF) [Entered: 09/21/2017 02:45 PM]
09/25/2017	8	MEDIATION ORDER FILED: The Mediation Program of the 9th Circuit Court of Appeals facilitates settlement while appeals are pending. By 10/10/2017, counsel for all parties intending to file briefs in this matter are requested to inform the Circuit Mediator by email of their clients' views on whether the issues on appeal or the underlying dispute might be amenable to settlement presently or in the foreseeable future. This communication will be kept confidential, if requested... This communication should not be filed with the court... The existing briefing schedule remains in effect... [10592891] (VS) [Entered: 09/25/2017 02:08 PM]
09/25/2017	9 2 pg, 197.88 KB	MEDIATION ORDER FILED: The Mediation Program of the 9th Circuit Court of Appeals facilitates settlement while appeals are pending. By 10/10/2017, counsel for all parties intending to file briefs in this matter are requested to inform the Circuit Mediator by email of their clients' views on whether the issues on appeal or the underlying dispute might be amenable to settlement presently or in the foreseeable future. This communication will be kept confidential, if requested... This communication should not be filed with the court.... [10592895] (VS) [Entered: 09/25/2017 02:09 PM]
10/10/2017	10	Filed (ECF) notice of appearance of Margaret Benvignati Kwoka for Appellants ALDF, Animal

017	2 pg, 104.28 KB	Folks, Companion Animal Protection Society and Stop Animal Exploitation Now. Date of service: 10/10/2017. [10611154] [17-16858] (Kwoka, Margaret) [Entered: 10/10/2017 11:40 AM]
10/10/2017	11 1 pg, 183.02 KB	MEDIATION ORDER FILED: This case is RELEASED from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions. [10611900] (VS) [Entered: 10/10/2017 03:09 PM]
10/10/2017	12	Added attorney Margaret B. Kwoka for Companion Animal Protection Society Stop Animal Exploitation Now ALDF Animal Folks, in case 17-16858. [10612039] (JFF) [Entered: 10/10/2017 03:32 PM]
10/11/2017	13 8 pg, 84.48 KB	Filed (ECF) Appellant ALDF response to order to show cause dated 09/20/2017. Date of service: 10/11/2017. [10613249] [17-16858] (Dunn, Lindsey) [Entered: 10/11/2017 12:28 PM]
10/19/2017	14 3 pg, 85.49 KB	Filed (ECF) Appellees Animal and Plant Health Inspection Service and USDA reply to response to Court order dated 09/20/2017. Date of service: 10/19/2017. [10624041] [17-16858] (Tenny, Daniel) [Entered: 10/19/2017 01:03 PM]
11/14/2017	15 1 pg, 31.35 KB	Filed order MEDIATION (RGA): The briefing schedule remains suspended pending further order of the court. [10652772] (GWL) [Entered: 11/14/2017 10:09 AM]
11/15/2017	16 1 pg, 254.14 KB	Filed order (Appellate Commissioner): The response to this court's order reflects that the district court entered judgment against all plaintiffs on all claims on October 10, 2017. Accordingly, the court's September 20, 2017 order is discharged. See Fed. R. App. P. 4(a)(2). The opening brief and excerpts of record are due January 3, 2018; the answering brief is due February 5, 2018; and the optional reply brief is due within 21 days after service of the answering brief. (MOATT) [10655883] (JMR) [Entered: 11/15/2017 04:36 PM]
12/06/2017	17	Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant ALDF. New requested due date is 02/02/2018. [10681137] [17-16858] (Dunn, Lindsey) [Entered: 12/06/2017 03:17 PM]
12/06/2017	18	Streamlined request [17] by Appellant ALDF to extend time to file the brief is approved for All Appellants. Amended briefing schedule: Appellants Animal Folks, Animal Legal Defense Fund, Companion Animal Protection Society and Stop Animal Exploitation Now opening brief due 02/02/2018. Appellees Animal and Plant Health Inspection Service and United States Department of Agriculture answering brief due 03/05/2018. The optional reply brief is due 21 days from the date of service of the answering brief. [10681493] (JN) [Entered: 12/06/2017 04:46 PM]
02/02/2018	19 83 pg, 248.93 KB	Submitted (ECF) Opening Brief for review. Submitted by Appellants ALDF, Stop Animal Exploitation Now, Companion Animal Protection Society and Animal Folks. Date of service: 02/02/2018. [10749914] [17-16858] --[COURT UPDATE: Attached corrected brief. 2/5/2018 by TYL] (Kwoka, Margaret) [Entered: 02/02/2018 02:30 PM]
02/02/2018	20 318 pg, 11.96 MB	Submitted (ECF) excerpts of record. Submitted by Appellants ALDF, Animal Folks, Companion Animal Protection Society and Stop Animal Exploitation Now. Date of service: 02/02/2018. [10749932] [17-16858] --[COURT UPDATE: Attached corrected excerpts of record. 2/5/2018 by TYL] (Kwoka, Margaret) [Entered: 02/02/2018 02:37 PM]
02/05/2018	21 2 pg, 187.32 KB	Filed clerk order: The opening brief [19] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from

		the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [20] submitted by appellants. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10751708] (SML) [Entered: 02/05/2018 01:52 PM]
02/08/2018	22	Received 7 paper copies of Opening Brief [19] filed by appellants. [10758032] (DB) [Entered: 02/09/2018 12:49 PM]
02/08/2018	24	Filed 4 paper copies of excerpts of record [20] in 2 volume(s) filed by Appellants. [10758252] (SML) [Entered: 02/09/2018 02:04 PM]
02/09/2018	23 34 pg, 110.86 KB	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Public Citizen, Inc.. Date of service: 02/09/2018. [10758089] [17-16858] (Nelson, Scott) [Entered: 02/09/2018 01:24 PM]
02/09/2018	25	COURT DELETED INCORRECT ENTRY. Notice about deletion sent to case participants registered for electronic filing. Correct Entry: [28] . Original Text: Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by American Society for the Prevention of Cruelty to Animals. Date of service: 02/09/2018. [10758592] [17-16858] (Hensley, Robert) [Entered: 02/09/2018 03:33 PM]
02/09/2018	26	Entered appearance of Amicus Curiae Public Citizen, Inc.. [10758677] (SML) [Entered: 02/09/2018 03:55 PM]
02/09/2018	27 2 pg, 187.46 KB	Filed clerk order: The amicus brief [23] submitted by Public Citizen, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10758679] (SML) [Entered: 02/09/2018 03:55 PM]
02/09/2018	28 33 pg, 155.01 KB	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by American Society for the Prevention of Cruelty to Animals. Date of service: 02/09/2018. [10760895] --[COURT ENTERED FILING to correct entry [25] .] (SLM) [Entered: 02/12/2018 04:02 PM]
02/12/2018	29	Entered appearance of Amicus Curiae American Society for the Prevention of Cruelty to Animals. [10761035] (SML) [Entered: 02/12/2018 04:38 PM]
02/12/2018	30 2 pg, 186.91 KB	Filed clerk order: The amicus brief [28] submitted by American Society for the Prevention of Cruelty to Animals is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: green. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10761037] (SML) [Entered: 02/12/2018 04:39 PM]
02/15/2018	31	Received 7 paper copies of Amicus Brief [23] filed by Public Citizen, Inc.. [10765425] (DB) [Entered: 02/15/2018 11:34 AM]
02/15/2018	32 5 pg, 77.71 KB	Filed (ECF) Appellees Animal and Plant Health Inspection Service and USDA Unopposed Motion to extend time to file Answering brief until 05/01/2018. Date of service: 02/15/2018. [10765759] [17-16858] (Tenny, Daniel) [Entered: 02/15/2018 01:51 PM]

02/16/2018	33 1 pg, 185.36 KB	Filed clerk order (Deputy Clerk: amt): Granting unopposed (ECF Filing) motion [32] to extend time to file the answering brief. The answering brief is due 05/01/2018. The optional reply brief is due 21 days after service of the answering brief. [10766656] (AT) [Entered: 02/16/2018 09:07 AM]
02/16/2018	34	Received 7 paper copies of Amicus Brief [28] filed by American Society for the Prevention of Cruelty to Animals. [10767256] (DB) [Entered: 02/16/2018 11:53 AM]
05/01/2018	35 56 pg, 252.04 KB	Submitted (ECF) Answering Brief for review. Submitted by Appellees Animal and Plant Health Inspection Service and USDA. Date of service: 05/01/2018. [10857319] [17-16858] (Tenny, Daniel) [Entered: 05/01/2018 12:48 PM]
05/01/2018	36 2 pg, 186.82 KB	Filed clerk order: The answering brief [35] submitted by Animal and Plant Health Inspection Service and USDA is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10857798] (SML) [Entered: 05/01/2018 03:10 PM]
05/03/2018	37	Received 7 paper copies of Answering Brief [35] filed by Animal and Plant Health Inspection Service and USDA. [10860661] (RG) [Entered: 05/03/2018 01:26 PM]
05/22/2018	38 36 pg, 233.23 KB	Submitted (ECF) Reply Brief for review. Submitted by Appellants ALDF, Stop Animal Exploitation Now, Companion Animal Protection Society and Animal Folks. Date of service: 05/22/2018. [10881672] [17-16858] (Kwoka, Margaret) [Entered: 05/22/2018 02:07 PM]
05/22/2018	39 19 pg, 1.56 MB	Submitted (ECF) further excerpts of record. Submitted by Appellants ALDF, Stop Animal Exploitation Now, Companion Animal Protection Society and Animal Folks. Date of service: 05/22/2018. [10881725] [17-16858] (Kwoka, Margaret) [Entered: 05/22/2018 02:20 PM]
05/22/2018	40 2 pg, 187.33 KB	Filed clerk order: The reply brief [38] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the further excerpts of record [39] submitted by appellants. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10881772] (SML) [Entered: 05/22/2018 02:34 PM]
05/29/2018	41	Received 7 paper copies of Reply Brief [38] filed by appellants. [10888663] (DB) [Entered: 05/29/2018 04:59 PM]
05/29/2018	42	Filed 4 paper copies of further excerpts of record [39] in 1 volume(s) filed by Appellants. [10891920] (SML) [Entered: 05/31/2018 02:38 PM]
08/27/2018	43	<p>This case is being considered for an upcoming oral argument calendar in San Francisco</p> <p>Please review the San Francisco sitting dates for December 2018 and the two subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please inform the court <i>within 3 days of this notice</i>, using CM/ECF (Type of Document: File Correspondence to Court; Subject: regarding availability for oral argument).</p>

When setting your argument date, the court will try to work around unavoidable conflicts; the

court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter *within 3 days of this notice*, using CM/ECF (**Type of Document**: File Correspondence to Court; **Subject**: request for mediation).[10991443] (AW) [Entered: 08/27/2018 03:52 PM]

08/30/2018 [44](#)
1 pg, 13.41 KB

Filed (ECF) Appellees USDA and Animal and Plant Health Inspection Service Correspondence: regarding availability for oral argument. Date of service: 08/30/2018 [10995789] [17-16858] (Tenny, Daniel) [Entered: 08/30/2018 09:44 AM]

08/30/2018 [45](#)
4 pg, 124.42 KB

Filed (ECF) Appellants ALDF, Animal Folks, Companion Animal Protection Society and Stop Animal Exploitation Now Correspondence: Notice Regarding Availability for Oral Argument. Date of service: 08/30/2018 [10996634] [17-16858] (Kwoka, Margaret) [Entered: 08/30/2018 03:04 PM]

10/07/2018 46

Notice of Oral Argument on Monday, December 17, 2018 - 9:00 am - Courtroom 2 - San Francisco CA.

View the Oral Argument Calendar for your case [here](#).

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

When you have reviewed the calendar, download the [ACKNOWLEDGMENT OF HEARING NOTICE form](#) and within 21 days of Monday, December 17, 2018, file the completed form via Appellate CM/ECF. [11037914] (AW) [Entered: 10/07/2018 06:09 AM]

10/29/2018 [47](#)
1 pg, 46.85 KB

Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Daniel Tenny for Appellees Animal and Plant Health Inspection Service and USDA. [11063376] [17-16858] (Tenny, Daniel) [Entered: 10/29/2018 09:26 AM]

10/29/2018 [48](#)
1 pg, 170.17 KB

Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Margaret B. Kwoka for Appellants Animal Folks, ALDF, Companion Animal Protection Society and Stop Animal Exploitation Now. [11064112] [17-16858] (Kwoka, Margaret) [Entered: 10/29/2018 01:08 PM]

12/17/2018 49

ARGUED AND SUBMITTED TO CONSUELO M. CALLAHAN, N. RANDY SMITH and FERNANDO M. OLGUIN. [11122796] (JRL) [Entered: 12/17/2018 02:10 PM]

12/17/2018 [50](#)
1 pg, 15.72 MB

Filed Audio recording of oral argument.
Note: Video recordings of public argument calendars are available on the Court's website, at <http://www.ca9.uscourts.gov/media/> [11123357] (TG) [Entered: 12/17/2018 05:07 PM]

07/23/2019 [51](#)
9 pg, 268.13 KB

Filed (ECF) Appellants ALDF, Animal Folks, Companion Animal Protection Society and Stop Animal Exploitation Now citation of supplemental authorities. Date of service: 07/23/2019. [11373841] [17-16858] (Kwoka, Margaret) [Entered: 07/23/2019 02:23 PM]

08/29/2019 [52](#)
151 pg, 3.23 MB

FILED OPINION (CONSUELO M. CALLAHAN, N. RANDY SMITH and FERNANDO M. OLGUIN) REVERSED in part, AFFIRMED in part, and REMANDED. Each party shall bear its own costs on appeal. Judge: CMC Dissenting, Judge: NRS Authoring. FILED AND

ENTERED JUDGMENT. [11414579] (AKM) [Entered: 08/29/2019 07:55 AM]
